

**Committee on International Relations  
Subcommittee on Africa, Global Human Rights and International  
Operations**

**Testimony of Deputy Assistant Secretary for Overseas Citizens Services  
Catherine M. Barry**

**“Status of the U.S. Implementation of Hague Convention on  
Intercountry Adoptions”**

**November 14, 2006**

Chairman Smith and distinguished members of the Committee:

It is fitting that the Committee chose to hold this hearing during National Adoption Month, as the Hague Convention on Intercountry Adoption constitutes one of the most comprehensive and important reforms to the intercountry adoption process in recent memory. Its implementation by the United States next year will create new, federal-level standards and protections that will greatly benefit those thousands of children from around the world in need of permanent families. I welcome this opportunity to provide you with a report on the progress we have made in making this important treaty a reality for the United States.

The Department of State has made implementation of the Hague Adoption Convention a top priority for the Bureau of Consular Affairs. We have met a number of important milestones this year in our efforts to complete ratification of this Convention. We are on track to complete the remaining legal requirements assigned to the Department of State by the Intercountry Adoption Act (IAA) so that the United States can ratify the Convention in 2007.

Let me now update you on the status of our work. The Intercountry Adoption Act of 2000, the legislation implementing the Hague Convention, required adoption service providers to be accredited, temporarily accredited or approved in order to perform adoption services in connection with a Convention adoption. To meet this requirement, we published the final rule

on accreditation of agencies and approval of persons, 22CFR Part 96, in February of this year. It is a comprehensive and detailed regulation that reflects input from about 1500 adoption stakeholders. We conducted a preliminary comment period, published draft rules on the internet and solicited informal input through surveys and outreach efforts, held a multitude of public meetings throughout the process, issued a proposed rule, published all the comments on our website, and created and issued a final rule that responds to all the passionate and sometimes conflicting public comments. We have made every effort to ensure that the final rule reflects both the letter and the spirit of the bi-partisan legislation enacted by Congress—the IAA—and takes into account the input received from all interested stakeholders.

At the same time, we finalized a rule, 22 CFR Part 98, which addresses the retention of Convention adoption records for 75 years by the Departments of State and Homeland Security. We also completed work on the final rule governing emigrating or outgoing cases. This rule, 22CFR Part 97, outlines the requirements for the issuance of Hague Adoption Certificates and Hague Custody declarations in cases when a child resident in the United States leaves to live with adoptive parents in another Hague Convention country. The Department issued the rule as final with minor changes, taking into account the public comments that we received on the proposed rule. The publication of this final rule is a milestone in Convention implementation. For the first time at the federal level, the rule creates sound safeguards and uniform protections for U.S. children who are being adopted by prospective adoptive parents from another Convention country. The final rule will take effect when the Convention enters into force for the United States.

We also recently published a proposed rule, 22CFR Part 99, which will require reporting on cases involving American children emigrating to either Convention or non-Convention countries. The public comment period for this proposed rule closed just yesterday, November 13, 2006. We expect to be able to issue the rule in final quite soon, given its short length and limited application. Under the IAA, the rule must also be signed by DHS before being issued in final.

Comment [b1]: WH counsel also wants this deleted.

In addition to our regulatory work, this past summer the Department signed Memoranda of Agreement (MOAs) with the Council on Accreditation (COA) and Colorado's Department of Human Services, designating them as accrediting entities (AEs). We then published these MOAs in the *Federal*

*Register.* These two accrediting entities are highly qualified and have demonstrated that they are fully capable of performing the important work to accredit, temporarily accredit, or approve adoption service providers. I am pleased that representatives of these two entities are here today. Allow me to describe these organizations' qualifications for this important work.

The Colorado Department of Human Services is the licensing authority for non-profit adoption agencies in Colorado. The Colorado licensing department is experienced with regulating adoption service providers as well as with enforcing its standards via denial or withdrawal of licenses of adoption services that do not meet its comprehensive standards. Colorado will accredit only adoption service providers located and licensed in the State of Colorado.

The Council on Accreditation, or COA, is recognized nationally as a premier accrediting entity for both private and public social service agencies. It has many years of experience in accreditation, with a commitment to assisting its member social service agencies in developing the highest standards of practice in programs for children and families.

After designating the accrediting entities, the Department was required to approve certain aspects of their early accreditation and approval work. Specifically, as required by the IAA, the accrediting entities submitted for the Department's approval their detailed budgets and proposed fee schedules. After careful review, we approved the fees as required by the IAA.

The Department also approved the substantial compliance system that Colorado and COA jointly proposed for their trained evaluators to use in evaluating adoption service providers in accordance with the standards in the accreditation/approval regulation. We appreciate the work that they have completed to date to ensure that accredited and approved adoption service providers will be in substantial compliance with the regulatory standards, as required by the IAA, the Memoranda of Agreement, and the accreditation/approval regulations.

With the approval of the fee schedules and substantial compliance systems, the Department was able to set this Friday, November 17, as the Transitional Application Deadline, or TAD -- another important milestone for us. This deadline is important because it establishes how many adoption service

providers have applied for accreditation, temporary accreditation, or approval. Knowing the number of applicants will permit us to project how long it will reasonably take for the accreditation and approval process to be completed. Adoption service providers who have applied by the transitional application deadline and who have been approved by the deadline for initial accreditation will be included on the first list of accredited or approved adoption service providers sent to the Hague Permanent Bureau when we ratify the Convention.

As required by our MOAs with the AEs, they will keep the Department informed when problems arise. Complaints from adoptive parents, birthparents, adoptees and other stakeholders regarding compliance with the Hague Convention and the IAA will be taken very seriously by the Department and the AEs. Before designating COA and Colorado as AEs, we verified the procedures they follow in investigating complaints, what enforcement methods were available to them, and what penalties or corrective actions could be imposed. We also covered enforcement issues in detail in the final regulation on the accreditation/approval of adoption service providers. Many of the sections of the final rule regulate the accrediting entities. We take our oversight responsibilities under the IAA seriously and will be monitoring AE compliance with the regulations and the MOAs. Standards in the regulations also incorporate measures necessary when complaints about adoption service providers have not been resolved appropriately. These include revoking an adoption service provider's accreditation or approval permanently or until appropriate corrective action has been taken.

In addition to our regulatory work and our work with the accrediting entities, we are developing a web-based case tracking system called the Adoption Tracking System (ATS) of which the Complaint Registry that we discussed above is a component. The system fulfills the IAA requirement in section 102 (e) for the Department and DHS to establish a case registry that tracks all pending intercountry adoption cases, and allows retrieval of information on both pending and closed intercountry adoption cases involving the United States. This system will include data from our immigrant visa computerized databases and data received on cases in which children emigrate from the United States.

We have already completed development of those ATS components to be used by accrediting entities and adoption service providers. The final

component, the Case Registry, is under development now. The challenge for us will be to acquire information about emigrating (outgoing) cases as required by the IAA. Under our federal system such cases are handled at the State level and there is currently no requirement that those parties involved provide that information to us. The proposed joint rule (22 CFR Part 99) that I mentioned earlier will impose new reporting requirements for these cases.

We will monitor the performance of the AEs using a variety of mechanisms, including site visits, document reviews, and scheduled telephone contact. In recent months, we have held frequent on-line meetings with the AEs about ongoing implementation issues. Our agreements with the AEs permit the Department to obtain copies of the forms and materials they use and to inspect all records relating to the accreditation function. The AEs will also report events that may have a significant impact on their ability to perform their duties. These include financial difficulties, changes in key personnel, State legislative or regulatory changes, legal or disciplinary actions or conflicts of interest. Department staff responsible for AE liaison and oversight will monitor the complaint registry regularly to track how the AEs resolve any complaints against adoption service providers.

Outreach continues to be an important part of our plan to reach our target ratification date in 2007. In recent months, we have spoken at several conferences sponsored by organizations such as the Lutheran Adoption Network, the North American Council on Adopted Children, the American Academy of Adoption Attorneys and Holt International Children's Services. During such events, we strive to explain the importance of the Hague Convention and provide an overview of the changes we anticipate once we ratify. We have also sent letters to state licensing offices in all 50 states, the District of Columbia, and Puerto Rico to update them on the Convention and to provide information about the accreditation and approval regulations that will affect adoption service providers.

To respond to inquiries from the adoption community, we created a dedicated mailbox, [AdoptionUSCA@state.gov](mailto:AdoptionUSCA@state.gov). We have answered hundreds of questions about Hague implementation via this email address. We also established a listserv to send e-mail messages to all interested adoption stakeholders to keep them informed of Convention developments. Other members of the public can join this listserv. To help prospective adoptive parents get a better understanding of what the Convention will

mean to them, our Hague implementation staff recently published a new guide specifically for that key audience.

We are very committed to ensuring that all aspects of the regulatory process are transparent and take into account the views of adoption stakeholders to the fullest extent possible. To accomplish this, we work very closely with adoption community leaders to solicit their input and perspectives on Hague-related issues, including proactively soliciting their comments on proposed regulations.

Under the IAA and its amendments to the INA, DHS has responsibility for functions related to the filing of intercountry adoption applications. DHS is in the process of drafting proposed regulations to set forth procedures and eligibility requirements for Hague cases under the IAA. Earlier this year we issued a companion proposed rule (22 CFR Part 42) on consular officer procedures for Hague cases overseas. We are coordinating with DHS so that our rule is compatible with any DHS-issued regulation. In this regard, I would especially like to thank my colleagues from US Citizenship and Immigration Services (USCIS) who are here with us today and who have worked very closely with us in this partnership. Our relationship with USCIS is very cooperative and the regular adoption working group meetings chaired by DHS with Bureau of Consular Affairs participation include frequent discussions on Hague implementation. I will let my colleague from DHS address the status of its proposed rule for Hague case procedures.

We are also increasing our diplomatic efforts to ensure that our future Convention country partners will be able to comply with the Convention's requirements for countries of origin. Once the Convention enters into force for the United States, prospective adoptive parents who adopt from Convention countries will have assurance that their child was not a victim of unscrupulous adoption practices but was a child eligible for adoption and in need of a permanent and loving home.

Before I conclude, I would like to say a few words about one important Hague Convention partner: Guatemala.

Guatemala is recognized as a party to the Hague Adoption Convention under international law. But Guatemala has not implemented the Convention, and its current adoption process is not consistent with Hague principles for the protection of children and families. Pursuant to our commitment to the

Hague Convention, the Department has made clear to all appropriate Guatemalan government agencies that we will not continue adoptions from that country unless they comply with the Hague Convention standards.

The current adoption process in Guatemala does not afford many of the children and families the protections they deserve. Most Guatemalan birth mothers directly relinquish a child to an attorney, whose practices and methods for obtaining consents are unregulated. The birth mothers typically relinquish the child without counseling and without the benefit of any public entity ensuring that the relinquishment is truly voluntary. Full compliance with the Hague Convention would ensure that public authorities work with the birth families, not just private attorneys. It would also ensure that public authorities, such as executive branch agencies or courts, determine that a child is eligible for adoption, rather than a determination by unregulated private attorneys who currently control all aspects of the adoption process in Guatemala.

The process now in place in Guatemala, inherent with conflicts of interest, makes abuses possible and does nothing to prevent improper financial gain in connection with an intercountry adoption.

We are starting now, before the Convention enters into force for the United States, to strongly engage with Guatemalan officials in an effort to encourage and support Hague adoption reform at all levels.

For example, in mid- October, I visited Guatemala to continue the dialogue. The timeline is short, but we believe it is possible for both countries to implement the Convention in 2007.

In closing, let me reiterate that we at the State Department are proud of the significant Hague implementation milestones we have accomplished thus far, and are confident that Congress will see significant progress concerning the accreditation of U.S. adoption service providers over the next several months – the next major milestone towards ratification of the Convention.

Thank you for your continued support in our work to implement the Hague Adoption Convention, which is right for the world and right for the United States.